


CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
Assistant Commissioner for Patents, Washington, D.C. 20231, on January 17, 2001.

  
Kawai Lau

RECEIVED

JAN 31 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TECH CENTER 1600/2900



In the application of:

Narendra R. DESAI et al.

Serial No.: 09/589,358

Filing Date: June 8, 2000

For: LIPOSOME COMPOSITIONS OF  
PORPHYRIN PHOTOSENSITIZERS

Examiner: P. KULKOSKY

Group Art Unit: 1615

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This is in response to the Office Action mailed November 17, 2000, time for response to which was initially set to expire December 17, 2000. Accordingly, a Petition for a one month extension of time is included herewith, extending the time for response to January 17, 2001.

Applicants respectfully traverse the Restriction and submit that the asserted basis for the Restriction are insufficient. Applicants thus respectfully request the Restriction be reviewed and either withdrawn or modified for the following reasons.

The Examiner has stated that Group I (claims 15-30) and Group II (claims 31 and 32) are related as product and method of use. Applicants agree.

The Examiner has further stated that “the product can be used in a materially different process such as oral administration.” While Applicants agree in principle with this statement, Applicants fail to understand why this is a materially different process because the Group II methods encompass administration of the Group I product by any means, including oral administration. Applicants thus do not understand why oral administration is a process that is “materially different” from the methods of Group II. Applicants respectfully submit that the reasons for restriction are thus insufficient and the restriction requirement may be properly withdrawn.

Additionally, Applicants note that the definition of class 424 as provided in the Manual of Classification includes processes of using compositions that are the subject matter of the class (see Statement of Class Subject Matter, subsection E). Because the clear language of claims 31 and 32 (Group II) indicates that the claimed methods are directed to the use of Group I compositions, Group II may be properly classified along with Group I in class 424, subclass 450. With this classification, no search burden is present because the search of Group I would be identical to the search of Group II. Applicants thus respectfully submit that because no serious burden of search is present in searching a single subclass (see MPEP 803), the reasons for restriction between these Groups are insufficient and the restriction may be properly withdrawn.

In the event that the instant Restriction Requirement is maintained despite the above discussion, Applicants hereby elect Group I, claims 15-30, with traverse for the reasons presented above and respectfully request that upon the finding of allowability of Group I, the claims of Group II be rejoined as set forth at MPEP 821.04.

Applicants expressly reserve the right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

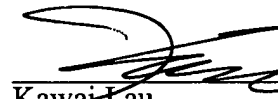
Applicant requests examination of the elected subject matter on the merits.

In the event that the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 273012008102. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: January 17, 2001

By:



Kawai Lau  
Registration No. 44,461

Morrison & Foerster LLP  
3811 Valley Centre Drive - Suite 500  
San Diego, CA 92130-2332  
Telephone: (858) 720-5178  
Facsimile: (858) 720-5125